



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 10009, Richmond, Virginia 23240

Fax (804) 698-4500 TDD (804) 698-4021

www.deq.virginia.gov

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

(804) 698-4000
1-800-592-5482

January 6, 2006

Mr. J. Robert Hume
U.S. Army Corps of Engineers
Regulatory Branch
Norfolk District, Fort Norfolk
803 Front Street
Norfolk, Virginia 23510-1096

RE: Section 401 Water Quality Certification of Norfolk District Regional Permit 37

Dear Mr. Hume:

On November 21, 2005 the U.S. Army Corps of Engineers (USACE) Norfolk District published a public notice regarding their issuance of a Regional Permit (RP-37) for discharges performed or funded by the Natural Resources Conservation Service (NRCS) under its Emergency Watershed Protection Program (EWP). The USACE's reason for issuing RP-37 was to develop a more expeditious process that would allow the commencement of construction and associated remedial action when certain disasters occur. RP-37 replaces Nationwide Permit 37, which formerly covered these activities and is now suspended. The USACE incorporated a suite of conditions in RP-37 to safeguard important aquatic and historic resources and minimize impacts.

The State Water Control Board hereby provides conditional § 401 Water Quality Certification for the Norfolk District's Regional Permit 37 (RP-37), provided that the following additional conditions are met:

1. The work carried out under this permit is to restore damage incurred by a natural disaster event declared as a local or state of emergency pursuant to Code of Virginia § 44-146 et seq.;
2. Wetland or stream impacts be avoided and minimized to the maximum extent practicable;
3. The proposed work does not allow impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;
4. Additional or inadvertent impacts caused by the restoration activities requires compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and function; and that any such compensatory mitigation be provided through wetland or stream creation or restoration, purchase or use of mitigation bank credits in accordance with § 62.1-

44.15:5 E of the Code of Virginia, contribution to an in-lieu fee fund approved by the board in accordance with these regulations, or preservation or restoration of upland buffers adjacent to wetlands or other state waters or preservation of wetlands or streams when done in conjunction with creation, restoration or mitigation bank credits; and

5. The NRCS notifies DEQ if they or the local sponsor prefers not to incorporate one or more of the recommendations made by the Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or the Department of Conservation and Recreation regarding measures to avoid adverse effects of a project on state designated critical or proposed critical habitat or a state listed or proposed threaten or endangered species or two categories of trout waters, Class V (Put and Take Trout Waters) and Class VI (Natural Trout Waters); DEQ will then consult with the agency or agencies who made the recommendation(s) and determine whether or not they need to be incorporated into the project plans.

The DEQ published our notice of intent to provide conditional §401 Water Quality Certification for the Norfolk District's proposed RP-37, provided the aforementioned conditions are met. We did not receive any public comments during the 30-day public comment period on our intent to provide certification.

Thank you for your continuing cooperation in the administration of the Joint Permit Program.

Sincerely,

Catherine M. Harold, PWS
Manager, Office of Wetlands and Water Protection